In the Supreme Court of the United States

October Term, 1964

STEWART L. UDALL, SECRETARY OF THE INTERIOR, PETITIONER

v.

JAMES K. TALLMAN, *et al.*, RESPONDENTS

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION OF MARATHON OIL COMPANY AND UNION OIL COMPANY OF CALIFORNIA FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF IN SUPPORT OF PETITIONER

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Marathon Oil Company and Union Oil Company of California respectfully move the Court for leave to file, as amici curiae, the attached brief in support of petitioner. Consent to the filing of the brief has been given by petitioner but respondents have refused to consent.

Leave is requested on the following grounds:

1. Amici, with leave of the Court, filed a brief in support of the petition for certiorari. They are the real parties in interest, for they are the owners of some of the oil and gas leases which the court below held are nullities. Their leases cover all of the lands in Public Land Order 487 which respondent Waldo E. Coyle seeks to compel the Secretary to lease to him, and a part of the lands in Executive Order 8979 which the other respondents seek to compel the Secretary to lease to them. They also own numerous

other leases on other lands in PLO 487 on which they have drilled several large gas wells, and from which they supply gas to Anchorage, Alaska. They own, too, other leases on other lands in Order 8979 which are in a unit producing large quantities of oil. In developing their leases for oil and gas, they have spent many millions of dollars.

2. The controlling issue in this case is whether the Secretary's construction of Order 8979 and PLO 487 is rational. He construed each Order in his decision under review as not closing the lands in the Order to oil and gas leasing. The leases which he had issued to amici, who were the first qualified applicants, were based upon that same construction. If this Court should hold his construction of the two Orders is not rational, then all of the leases issued to amici and others may be nullities. Obviously, this action involves more than the validity of the leases on the lands which respondents seek to lease.

3. The leases owned by amici include more lands in PLO 487 than in Order 8979, and the large gas field they have developed is on lands in PLO 487. For this reason, their greatest interest lies in PLO 487, which does not contain all of the language found in Order 8979. Much of the opinion of the court below was devoted to the language in Order 8979 not contained in PLO 487. Very little was said by the court about PLO 487. It never even held that the Secretary's construction of PLO 487 was irrational or unreasonable. It simply overturned his construction of PLO 487 because it did not believe that his construction of the language found only in Order 8979 was rational, but without giving any reason for its holding.

4. Amici will be able to present facts and arguments in support of the Secretary's construction of both Orders which the Solicitor General may not present for one reason or another. This was pointed out in the court below by counsel for the Secretary as one of the reasons why amici and other lease owners are indispensable parties. It was there said: "One of the difficulties always presented is that we consider it inappropriate for us, on behalf of the Secretary, to urge facts or equities which may favor such a

lessee." (R. 103.) Amici are the ones who stand to lose if the decision of the Court goes against the Secretary. They are indispensable parties, but not having been joined, they respectfully urge that they be heard before the Court renders a decision in a matter of such importance to them. The Secretary is not the representative of the lessees of the United States, and he cannot speak for them in an action involving the validity of their leases.* Nor was the Department of Justice required to notify amici of the pendency of this action or to raise the question of their indispensability in the district court. Indeed, even the Solicitor General has not deemed it appropriate to continue to urge the indispensable party issue, although he brought it to the Court's attention and briefed it in the petition for certiorari as a "latent jurisdictional question" (Pet. 2, n. 2; 17-20).

For the reasons stated, amici respectfully request leave to file the attached brief in support of the petitioner.

Respectfully submitted,

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* *Litchfield* v. *Richards*, 9 Wall. (76 U.S.) 575, 578, where this Court said: "This is not a case in which the land officers represent these claimants. They have no such duty to perform. They might let the injunction be issued without defense, and thus a proceeding almost *ex parte* be made to strangle the incipient right of the actual settler on the public lands."

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I.

INTEREST OF AMICI CURIAE

Amici are vitally interested in this controversy because they own several of the federal oil and gas leases which respondents contend are void and which the court below held are nullities. They are the real parties in interest and the ones who stand to lose if the decision below is not reversed. In addition, they own interests in numerous other federal leases on lands in the Kenai Moose Range, which,

too, may be nullities under the rationale of the decision below, and upon which they have spent many millions of dollars in exploring for, developing and producing oil and gas.

II.

ARGUMENT

A. *Respondents filed their lease applications too late.* The Department of the Interior issued the leases to amici because they were the first qualified applicants. No doubt leases would have been issued to respondents had they filed their applications before, instead of four years after, amici filed theirs, for the records of the Department showed all along that the Range was open to leasing. They were filed at a time when substantially all of the Range was then included in leases issued to, or in applications filed by, amici and others.

Amici acquired and developed their leases believing in good faith that the Range was always open to oil and gas leasing.[1] They necessarily relied upon the authority of the Department to determine which federal lands were available for lease. Nothing the Department ever did could have led respondents into believing that the Range was closed to leasing. They simply did not become interested in leas-

[1] Even before some, but after other leases of amici were issued, and before they developed any of them for oil and gas, the House Committee on Merchant Marine and Fisheries, in a report recommending that bills be not enacted which would prohibit the Secretary from disposing of, or relinquishing national wildlife refuges, without prior Congressional approval, said: "Under the law there are, generally speaking, three types of outside interests which may be granted in lands administered through the Fish and Wildlife Service. One type is the grant of sharecropping agreements for the raising of hay and grain * * *. Another applies to the grant of privileges relating to rights-of-way for telephone * * *. The third embraces the grant of privileges (typified by oil and gas leasing) for commercial use which do not have for their purpose the development, management, or use of the lands for wildlife conservation." H. Rept. No. 1941, 84th Cong., 2d Sess., March 22, 1956, "Preservation of National Wildlife Refuges," pursuant to H. Res. 118, pp. 3-4.

ing the lands until after oil and gas was discovered, when they then filed their applications in the hope of gaining a windfall, should they be successful in attacking the validity of the earlier leases or applications.[2]

B. *The Department followed its long and consistent construction of other similar orders.* In issuing the leases to amici and others, the Department was following its consistent administrative practice of more than 40 years of leasing lands which had been withdrawn from settlement,

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[2] Respondents filed their lease applications on August 14, 22, 1958, for lands already covered by pending lease applications. Over two years earlier, extensive congressional hearings were held and reports issued on the practice of the Secretary of leasing wildlife refuge lands for oil and gas and noting that the Secretary had issued several leases in 1954 and 1955 on parts of the Range, including 14 leases to The Ohio Oil Company (now Marathon Oil Company) between October 1-November 1, 1955. H. Rept. No. 1941, *supra*, pp. 3-4, 8, and Appendix, p. 18 to report.

Also, before respondents filed their lease applications, the same House Committee on Merchant Marine and Fisheries on July 25, 1956, (1) approved an exploratory and development plan of amicus Standard embracing approximately 72,000 acres of land in Order 8979 and the issuance of leases to amici Standard, Richfield, Ohio (now Marathon) and Union; and (2) approved the issuance of other leases on about 165,000 acres of land in Order 8979 under a development agreement proposed by amicus Standard, on the ground that the leasing and operations would not be detrimental to wildlife. (See letter June 29, 1956, John L. Farley, Director Fish and Wildlife Service, to Herbert C. Bonner, Chairman, House Committee on Merchant Marine and Fisheries; letter July 25, 1956, Herbert C. Bonner to John L. Farley (App. 22A-25A); also *Hearings before House Committee on Merchant Marine and Fisheries, "Proposal of the Fish and Wildlife Service to Lease Portions of Kenai National Moose Range, Alaska,"* July 20, 25, 1956, pp. 4-14.) These approvals were made pursuant to an interim arrangement between the Committee and the Secretary of the Interior under which the Secretary was to submit to the Committee certain information regarding oil and gas leases he proposed to issue on national wildlife refuges. H. Rept. No. 1941, *supra*, pp. 11, 12-13; letter March 21, 1956, Herbert C. Bonner, to Douglas McKay, Secretary of the Interior; letter March 21, 1956, Douglas McKay to Herbert C. Bonner (App. 19A-21A). This interim arrangement was later terminated by the Committee on May 2, 1958, after the Secretary promulgated the amendment to his leasing regulation relating to development of wildlife refuge and game range lands for oil and gas (January 8, 1958, 23 F.R. 227, 43 CFR § 192.9). See letter May 1, 1958, Assistant Secretary of the Interior Ross Leffler to Herbert C. Bonner (App. 26A); letter May 2, 1958, Herbert C. Bonner to Ross Leffler (App. 27A).

location, sale, entry or other disposition, where the order did not, as neither Order did here, expressly withdraw the lands from oil and gas leasing. Also, in construing Executive Order 8979 and Public Land Order 487, the Department was following its published opinions construing other similar orders during the past 40 years.[3] The words chosen by the Secretary for the two Orders had been used by him in so many other like orders that they then had a well-defined and well-understood meaning. To now give them a different meaning, as the court below did, would defeat the purposes of the Orders.

Many orders withdrawing lands for special purposes have been issued by the Secretary—in fact, over 1,800 were issued during the years 1920-1952. Of these, some 264 contain language substantially the same as that in Order 8979, except for the fish trap site exclusion;[4] and at least 413 contain language identical to that in PLO 487.[5] In every instance where the Secretary intended also to close the withdrawn lands to mineral leasing, positive, clear-cut language accomplishing that purpose was written into the order. At least 170 orders contain such language.[6] Moreover, the Secretary, in leasing lands in these withdrawals, construed the orders in the same way he construed Order 8979 and PLO 487. In a random check of oil and gas leasing in only

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[3] See, *e.g.*, *Opinion of the Solicitor*, 48 L.D. 459 (1921) ("reserved from entry, location, or other disposal"); *Noel Teuscher*, 62 I.D. 210 (1955) ("withdrawn from settlement, location, sale or entry"); *Opinion of the Solicitor*, 55 I.D. 205, 211 (1935) ("temporarily withdrawn from settlement, location, sale, or entry, and reserved for classification"). The Secretary may, of course, conclude that the purposes of a particular withdrawal would be impaired by leasing and for that reason decline to issue leases in the exercise of his discretion. See *e.g.*, *Earl J. Boehme*, 62 I.D. 9 (1955); *Haley* v. *Seaton*, 108 U.S. App. D. C. 257, 281 F.2d 620 (1961).

[4] For a list of these orders, see Table I, App. 1A ("withdrawn from settlement, location, sale, entry or other disposition," or frequently "other appropriation").

[5] For a list of these orders, see Table II, App. 3A ("withdrawn from settlement, location, sale or entry").

[6] For a list of these orders, see Table III, App. 6A ("withdrawn from all forms of appropriation, including the mining and mineral leasing laws").

two other states it was found and reported that about 106 leases were issued on lands withdrawn by orders identical to PLO 487 and approximately 260 leases were issued on lands withdrawn by orders substantially the same as Order 8979.[7] This pattern of leasing is clear proof of the consistent administrative practice and adherence to the rule of construction given the two Orders in issue, and establishes that the leasing program on the Range was no exception to the practice or the rule.

It is significant that, when the Secretary wanted to go ahead and close small tracts in the PLO 487 area to oil and gas leasing, which were then open to leasing, he issued orders withdrawing those tracts "from all forms of appropriation under the public-land laws, including the mining laws and the mineral-leasing laws."[8] This action was in complete accord with the more than 170 orders containing positive language closing the lands to leasing,[9] and it points up the conclusion that, in the absence of such positive language, PLO 487 and Order 8979 cannot be construed as closing the Range lands to oil and gas leasing.

C. *The Secretary's construction of the two Orders was rational.* The Secretary's construction of the two Orders is the only one which will carry out their purposes. His construction is a rational and reasonable one, if it is not the only rational and reasonable one. To construe the two Orders as the court below did necessitates reading into them language they do not contain, and giving the language they do contain a meaning different from its well-accepted meaning, both before and after the Orders were issued.

An examination of PLO 487 shows that it withdrew the

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[7] For examples of leases issued for lands withdrawn for special purposes, see Table IV, App. 8A. This tabulation is based on reports from the Land Offices in Montana and Wyoming (10A-12A). If the court below is correct, all of the leases identified in Table IV are or were nullities.

[8] Public Land Order 751, September 6, 1951, 16 F.R. 9044; Public Land Order 778, January 5, 1952, 17 F.R. 159.

[9] See *supra*, p. 4; also Table III, App. 6A.

lands only from "settlement, location, sale or entry."[10] It contains no language similar to that found in the other withdrawal orders which specifically withdrew certain tracts in the Range from oil and gas leasing (*supra*, p. 5). These four words in the Order limiting the scope and extent of the withdrawal were taken from the public-land laws and the mining laws—not from the mineral leasing laws. They are words descriptive of the steps which, if taken under those laws by one desiring to acquire title to public lands which are open, will vest in him an absolute right to a patent without any further action on the part of the Department.[11] They were written into PLO 487 for the sole purpose of temporarily closing the lands to settlers, purchasers, locators and entrymen, and thereby relieving the Secretary of what otherwise would have been an absolute obligation to alienate the lands. Retention of title and control of the lands was deemed necessary for the purposes of the withdrawal.

In contrast, however, closing the lands in PLO 487 to oil and gas leasing was unnecessary, because the Secretary had the authority, at his discretion, either to decline to lease

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[10] This provision in PLO 487 will be discussed first since the same provision is also contained in Order 8979, and then the additional language in that Order will be examined.

[11] "Settlement" and "entry" have special meaning for agricultural and townsite lands. The terms are words of art and frequently appear in the public-land laws. Settlement refers to the physical occupancy of the land for agricultural purposes. Entry connotes both possession of the land as authorized by the administrative procedure and the record notation or entry of the right to go on the land. Neither an oil and gas lease nor its forerunner, the prospecting permit, is considered an entry of public lands. See, *e.g.*, *R. B. Whitaker*, 63 I.D. 124, 127 (1956); *Martin Judge*, 49 L.D. 171, 172 (1922). For separate and distinct uses of the terms "settlement" and "entry" see Homestead Laws, 43 U.S.C §§ 161-263; also *Payne* v. *Newton*, 255 U.S. 438. For the public lands available and the conditions of "sale," see *e.g.*, Public and Cash Sale Acts, 43 U.S.C. §§ 671-700; Isolated Tract Act, 43 U.S.C. § 1171. "Location" is the acts adding up to a claim, fulfillment of which leads to a fee patent to the lands and minerals. See Mining Laws, 30 U.S.C. § 29; also *Cole* v. *Ralph*, 252 U.S. 286, 296. None of the terms have this special meaning with respect to oil and gas leasing.

the lands if the purposes of the withdrawal would be impaired;[12] or to lease the lands, in which event the United States would retain title, and he would retain control over the operations to whatever extent he might find necessary to prevent interference with the purposes of the withdrawal.[13]

The court below gave no reason for its holding that the lands in PLO 487 were closed to leasing. All it said was that these lands "were originally opened by the 1941 order but they were closed in 1948 by Order No. 487." (R. 89.) Obviously it was wrong in saying the lands were "opened" by the 1941 order, meaning Order 8979. That Order opened no lands. On the contrary, it created the Range and withdrew all of the lands in the Range, except an area along the shore of Cook Inlet and the Kenai River, from alienation under the public land laws. The excepted area remained subject to alienation at all times, except as to the part included in PLO 487 which was temporarily withdrawn from most forms of alienation during the period June 16, 1948 to September 9, 1955 while PLO 487 was in force.[14]

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[12] See *e.g.*, *Earl J. Boehme*, 62 I.D. 9 (1955); *Richard K. Todd*, 68 I.D. 291 (1961); *Haley* v. *Seaton*, 108 U.S. App. D.C. 257, 281 F.2d 620 (1961).

[13] See *Boesche* v. *Udall*, 373 U.S. 472, 477-478; *Ickes* v. *Development Corp.*, 295 U.S. 639, 645.

[14] PLO 487, having been "revoked in its entirety" by PLO 1212 (September 9, 1955, 20 F.R. 6795), making the lands again available to settlement, location, sale or entry, the Secretary went on in PLO 1212 to establish different periods of priorities in which applications to acquire fee title to the lands could be filed under the public land laws. Under these priorities, war veterans and qualified persons entitled to preferences under certain laws came first, after which the "public generally" could file their applications under "the public-land laws, including the mineral-leasing laws"; with their applications filed during a fixed period to be considered as having been filed simultaneously and their priorities determined at a public drawing. 20 F.R. 6795, ¶¶ 1, 4, 6 and 7. But approximately 30 days later on October 14, 1955, the Secretary amended PLO 1212 by striking all phrases referring to the mineral leasing laws. 20 F.R. 7904. He thus by amending the Order, confined its provisions to applications to acquire fee title under the public land laws. The inclusion in PLO 1212 of phrases referring to the mineral leasing laws was unnecessary, and had they not been stricken wherever they appeared in context with other provisions for filing applications under the public land laws to acquire fee title, the Order might have had the undesired effect of temporarily suspending the filing of oil and gas

PLO 487 did not rescind or cancel the provisions of Order 8979 creating the excepted area, nor did it restore the lands in the excepted area to the full operations of Order 8979, and the court below was wrong in saying the lands were "closed in 1948 by Order No. 487" (R. 89). The lands were only "temporarily withdrawn from settlement, location, sale or entry, for classification and examination, and in aid of proposed legislation." (13 F.R. 3462.) The PLO 487 area remained open to oil and gas leasing, as did all of the lands in the Range.

Under the rationale of the decision below, it necessarily follows that there will now be read into the hundreds of orders similar to PLO 487 another clause also withdrawing the lands from numerous statutory uses, unless the order expressly negates such withdrawal. This has never been the rule followed by the courts or the Department; it is illogical and unnecessary; it is an invasion by the court of the functions of the administrative officer charged with the responsibility of managing the public lands, and will be disruptive of thousand of titles and vast investments made during the last half century.

D. *There are language differences in PLO 487 and Order 8979.* The court below discussed in some detail certain language in Order 8979 not found in PLO 487, but it apparently concluded the differences in language did not require different constructions for it ultimately construed both Orders as closing the lands to leasing. Its construction would defeat the purposes of the two Orders, for the Secretary did not intend to close the lands in either Order

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lease applications under the mineral leasing laws until the period fixed in the Order for the public generally to file applications to acquire fee title. Also, the Order, unless amended, would have unnecessarily treated all oil and gas lease applications filed within the fixed period as having been simultaneously filed. The Secretary, to avoid the Order having these undesired effects, issued the amendment promptly, and long before the period fixed in the Order for the public generally to file applications under the public land laws to acquire fee title. The changes made in PLO 1212 are not relevant, and are explained simply because the court below noted them in its opinion, although it did not treat them of importance to its decision (R. 84-85).

to leasing, even though there are language differences.

Following the words "settlement, location, sale, or entry" appearing in both Orders, Order 8979 contains the following clause:

> "* * * or other disposition (except for fish trap sites) under any of the public-land laws applicable to Alaska, or to classification and lease under the provisions of the act of July 3, 1926, entitled 'An Act to provide for the leasing of public lands in Alaska for fur farming, and for other purposes,' 44 Stat. 821, U.S.C., title 48, secs. 360-361, or to the act of March 4, 1927, entitled 'An Act to provide for the protection, development, and utilization of the public lands in Alaska by establishing an adequate system for grazing livestock thereon,' 44 Stat. 1452, U.S.C., title 48, secs. 471-471o: * * *."

Manifestly this Order withdrew and reserved "land," for it was the *land*, and not the oil and gas under the land, which was not "subject to * * * other disposition * * * under any of the public-land laws." This restrictive language nowhere prohibits a disposal, under other laws, of any oil and gas under the land, or a leasing of the land for a removal of the oil and gas.

The term "public-land laws," appearing in Order 8979 is commonly used to refer to the numerous statutes governing the alienation of public land, and in construing the Order it must be given the commonly accepted meaning. The term must not be confused with the "mining laws," another and different term often used to identify statutes governing the mining of hard minerals on public lands; or with the "mineral leasing laws" also frequently used to refer to statutes governing the leasing of public lands for oil and gas.[18]

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[18] See *e.g.*, *Kinney-Coastal Oil Co.* v. *Kieffer*, 277 U.S. 488, 491, 504, where this Court stated: The Acts of 1914 and 1920 [Mineral Leasing Act] are to be read together—each as the compliment of the other. So read they disclose an intention to divide oil and gas lands into two estates for the purpose of disposal—one including the underlying oil and gas deposits and

Unfortunately, the court below confused these different laws, for it said, "* * * there is no doubt that the Mineral Leasing Act of 1920 is a public-land law applicable to Alaska," citing as authority 43 CFR § 71.1 (1954), a regulation promulgated by the Secretary. But this regulation does not support the court's positive statement. It merely provides that "regulations under the Mineral Leasing Act of February 25, 1920 * * * shall govern the issuance of oil and gas * * * leases, in Alaska." This is admitted, but it is no authority for the court's conclusion that the "public-land laws applicable to Alaska," as used in the context of Order 8979, meant or included the mineral leasing laws.

Moreover, under well-established rules of construction, "other disposition under any of the public-land laws" meant only dispositions analogous to and of the same kind, character and nature as the preceding dispositions,[16] which were all dispositions by alienating the lands.[17] This was

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the other the surface—and to make the latter servient to the former." The public land laws are actually under a Title of the United States Code different from the one containing the mining laws and mineral leasing laws. Compare Title 43 U.S.C., Public Lands, and Title 30 U.S.C., Mineral Lands and Mining. For frequent references to the mining laws and mineral leasing laws, see Defense Department Land Withdrawal Act of February 28, 1958, §§ 1-3, 6, 72 Stat. 27-30, 43 U.S.C. §§ 155-158; Mineral Leasing Act for Acquired Lands of August 7, 1947, c. 513, § 1, 61 Stat. 913, 30 U.S.C. § 351; Mining Rights Restoration Act of August 12, 1953, c. 405, §§ 1-5, 67 Stat. 539, 30 U.S.C. §§ 501-505; Multiple Mineral Development Act of August 13, 1954, c. 730, §§ 1-11, 68 Stat. 708-717, 30 U.S.C. §§ 521-531; Coal Lands-Source Materials Mining Act of August 11, 1955, c. 795, §§ 1-10, 69 Stat. 679-681, 30 U.S.C. §§ 541-541(i); Surfaces Resources Act of July 23, 1955, c. 375, § 5, 74 Stat. 201, 30 U.S.C. § 613.

[16] The rule of *ejusdem generis* is a valuable tool for determining the meaning of the more general words. A resort to the rule will neither obscure nor defeat the intent and purpose of the Secretary. *Gooch* v. *United States*, 297 U.S. 124, 128; *United States* v. *Alpers*, 338 U.S. 680, 682. See also *Ickes* v. *Development Corp.*, 295 U.S. 639, 645: "The Leasing Act of 1920 inaugurated a new policy," whereby the Government retained the title and the minerals were subject to lease only.

[17] A "disposal" or "disposition" in public land parlance is equivalent to sale and complete alienation of title—the vestiture of title in the one to whom the disposition is made. *Arant* v. *State of Oregon*, 2 L.D. 641 (1883); *State of Oregon* v. *Frakes*, 33 L.D. 101, 103 (1904). An oil and gas lease is

the rule of construction the Department followed in a decision published more than two decades before the Secretary issued Order 8979, where it held that the words "other disposal," when used in a similar context, meant only such disposals as would constitute an alienation of the lands, and not a leasing of lands for oil and gas.[18] It is the same rule of construction which the Department advised the House Committee on Merchant Marine and Fisheries that it had followed since 1921, and had specifically followed in leasing the Range for oil and gas, and is the rule which that Committee tacitly followed when it approved on July 25, 1956, under an interim arrangement with the Secretary, unitization of numerous leases on Range lands and the issuance of other leases on the lands.[19]

The court below said in regard to Order 8979 that the "* * * specific exemption for fish trap sites in the order strengthens our conviction" that "[T]he prohibition on disposition should be read in an expansive manner * * * [R]ather than the narrow coverage the Secretary now urges." (R. 88-89.) Surely a construction of the Order in a matter of this great importance should not rest upon a parenthetical fish trap exception, when the exception was only included to protect the rights of natives to operate fish traps under permits issued by the Defense Department, in the waters which, together with the surrounding lands, had been withdrawn and reserved as a breeding ground for moose.[20] Operation of the traps was not even such a use

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neither an entry nor an appropriation and does not vest title to the lands in the lessee. *Opinion of the Solicitor*, 48 L.D. 459, 464 (1921); *Amerman* v. *Mackenzie*, 48 L.D. 580, 581 (1922). For a discussion of the limited nature an oil and gas lease, see *Boesche* v. *Udall*, 373 U.S. 472, 477-478.

[18] *Opinion of the Solicitor*, 48 L.D. 459, 463-464, (1921).

[19] See note 2, *supra*, p. 3; App. 25A; also *Hearings before House Committee on Merchant Marine and Fisheries, Proposal of the Fish and Wildlife Service to Lease Portions of Kenai National Moose Range, Alaska*, July 20, 25, 1956, pp. 25-30, 30-A.

[20] The court below likened a fish trap permit to an oil and gas lease (R. 88). Nothing could be farther from correct. The Secretary does not issue fish trap site permits, he merely regulates, for purposes of conserva-

as required a lease of the site from the Secretary of the Interior. He had no proprietary jurisdiction over the navigable waters but only conservation jurisdiction over fishing. Permits were only required from the Defense Department because the traps were obstructions to navigation.

Possibly the fish trap site exception, if needed at all, could have been fitted into the Order in a more appropriate place, but since it was not, it does not follow that because this one use, not proprietary or alienable by deed, was excepted from "other disposition under any of the public-land laws" the Order must now be construed in such an "expansive manner" as will prohibit all permissible statutory proprietary uses of public lands. No court is required to construe an order contrary to the intent of the Secretary, or in a way that will defeat the purposes of the order.

An additional reason why the "other disposition" language cannot be expanded to prohibit all other permissible statutory uses, except fish trap sites, is because the Order goes on to specifically describe two permissible statutory uses which could no longer be made of the lands, viz, leasing the lands for fur farming and leasing the lands for livestock grazing. Under all accepted rules of construction, the inclusion of a prohibition against these two uses precludes reading into the Order, by implication, prohibitions against other permissible statutory uses, such as oil and gas leasing.

The court below attempted to avoid this rule by saying that the "public-land laws applicable to Alaska" as used in Order 8979 meant only "those laws of general applicability throughout the country which were made applicable to Alaska" and that the two laws permitting fur farming and grazing were merely local laws applicable only to Alaska (R. 88). Consequently, the court gave the "other disposition" phrase an "expansive coverage" when it wanted the

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tion, the operation of fish traps. For the Secretary's regulations see 50 CFR §§ 101.7-101.8, 102.22-102.33 (1951). For good discussions of practices regarding fish trap sites, see *Metlakatla Indian Com. Annette Island Res.* v. *Egan*, 362 P. 2d 901, 903-905 (Alaska 1961), reversed 369 U.S. 45.

phrase to include the mineral leasing laws, but a "narrow coverage" when it wanted the phrase to exclude two public land laws authorizing the leasing of Alaska lands for fur farming and livestock grazing.

The court below, in an endeavor to support its theory of "expansive coverage" was wrong when it said the Secretary had urged that oil and gas leasing be excepted along with fish trap sites from the prohibitory provisions of the Order (R. 88). This was not the position of the Secretary. He has never read into the Order, by implication, another exception. It has been his position all along that "other disposition" does not include oil and gas leasing.

Only two cases to support giving the Order "an expansive coverage" are cited in the opinion, but the court recognized that these cases were "not dispositive of the question" (R. 89). In the first case, *Bourdieu v. Pacific Western Oil Co.*, 299 U.S. 65, this Court accepted as valid without discussion a lease issued at a time when the lands in the lease had been withdrawn and reserved by an order quite similar to PLO 487, and went on to decide the case on another point. In the other case, *McLennan v. Wilbur*, 283 U.S. 414, the authority of the Secretary to temporarily stop oil and gas leasing, as an aid in alleviating an over-production of oil in 1929, was sustained without any question being decided involving a construction of the stop order. In neither case did this Court hold that lands withdrawn from settlement, location, sale, or entry were also withdrawn from oil and gas leasing under the Mineral Leasing Act.

E. *The dispute is one of form and not of substance anyhow.* The Secretary's construction of the two Orders as permitting him to execute oil and gas leases, did not result in his gaining, by such construction, a power he did not then have, for he had the power under the Mineral Leasing Act to lease lands which were open[21] and also since 1942 the au-

[21] Mineral Leasing Act of February 25, 1920, c. 96, § 1, 41 Stat. 437, as amended, 30 U.S.C. § 181.

thority to close and open public lands to oil and gas leasing.[22] In the final analysis, the question is not one involving the power of the Secretary to lease the lands,[23] but one of interpretation of language which he could unilaterally change anyway.

Respondents do not claim that the Department construed Order 8979 and PLO 487 one way at one time and a different way at another time, or that its construction deceived or misled anyone. No one could have been misled because the Department's published decisions, and administrative practice in leasing withdrawn lands, constituted a body of experience and informed judgment, and a policy statement on which the public interested in oil and gas leasing could have relied for guidance.[24]

Moreover, respondents were not misled, because the Secretary's Kenai Moose Range Notice of August 2, 1958, under which they filed their lease applications and erroneously claim opened the lands in suit to oil and gas leasing, expressly provided that the lease applications then pending on lands in the Range, and upon which processing action had since 1953 been suspended, would thereafter be acted upon and adjudicated in accordance with the regulations (23 F.R. 5883). No language could have more clearly shown that the Secretary had considered all along that the lands were open to leasing than that contained in the notice under which respondents made their filings.

A statement in the court's opinion indicates it did not understand the procedure and practice or purpose of the

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[22] Executive Order 9146, April 24, 1942, 7 F.R. 3067; Executive Order 9337, April 24, 1943, 8 F.R. 5516; Executive Order No. 10355, May 26, 1952, 17 F.R. 4831.

[23] The House Committee on Merchant Marine and Fisheries concluded not to recommend legislation which would take from the Secretary the power he had to lease wildlife refuge areas. See H. Rept. No. 1941, 84th Cong., 2nd Sess., March 22, 1956, "Preservation of National Wildlife Refuges" pursuant to H. Res. 118, p. 11.

[24] See *e.g.*, *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140.

simultaneous filing period under the August 2, 1958 notice and the 1959 public drawing, for it obliquely infers that respondents may not have been treated fairly when the Secretary, instead of issuing leases to respondents (who had prevailed at the drawing) had gone ahead and issued leases to the prior applicants who had filed the first lease offers (R. 86). Of course, no charge of unfairness was made in the complaint, and even had it been made, it would not have been true because the purpose of the simultaneous filing period is to assure fair treatment by drawing by lot the order of priority for processing the simultaneous filings.

The drawing does not assure anyone a lease. It merely establishes a sequence of processing or adjudication among the simultaneously filed applications. If an application is regular and if the land is available, a lease will issue; if irregular, the application is rejected and the next application in the sequence of drawing is processed. If the land is already covered by a lease, the application is rejected, and it was for this reason that respondents' applications were rejected. It is axiomatic that a lease cannot be issued on a subsequent application if the land is covered by a prior application even though there is a public drawing.

The orderly administration of public affairs forbids the courts lightly to invalidate a long-continued course of administrative action, on the basis of which private rights have become vested, and to which all the responsible agencies of the government have adjusted their activities. *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 472-473.

F. *The court below exceeded the permissible scope of judicial review.* Instead of determining whether the construction which the Secretary and the Department have consistently given the two Orders was reasonably permissible, the court below construed the Orders without regard to the previous administrative construction and practice of the Department, and as though this were not an administrative review proceeding, but an ordinary judicial action to deter-

mine in the first instance the meaning of the Orders.[25] This case presents no problem as to what the Secretary meant by the language of the Orders, for his meaning was clearly established (*supra*, pp. 3-5). The only question is whether the Secretary was so unskilled in the use of the English language that he wrote into the Orders the opposite of what he intended. An agency's construction of its rules is binding on a court.[26] *A fortiorari*, the Secretary's construction of his Orders should likewise be accepted by the court.

The court below started its opinion by saying that the "main attack is on the Secretary's authority to draw various historical conclusions * * *" (R. 83). There can be no doubt about his authority to draw historical conclusions regarding public lands and the two Orders in question—he drafted the Orders, had the power to revoke or modify them and was entrusted with plenary power over the public lands.[27] If his "historical conclusions"—drawn from the facts of this case—were reasonable, then the judicial review should have ended with affirming his decision.

As to the Secretary's construction of Order 8979, the court below said "[T]here are persuasive counter-arguments to the Secretary's contentions" and that the language indicates "[T]hat the prohibition on disposition should be read in an expansive manner" for it was "more likely" that the prohibitory phrase in Order 8979 was

[25] "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." *Mississippi Valley Barge L. Co.* v. *United States*, 292 U.S. 282, 287; see also *Unemployment Comp. Comn.* v. *Aragon*, 329 U.S. 143, 153-154; *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 472-473. As stated in *Pan American Petroleum Corporation* v. *Udall*, 192 F. Supp. 626, 628 (D.C. Dist. Col. 1963), the "power of the Court is limited to a review to determine whether the action of the Secretary was based on fraud, bad faith or lacked any rational basis in fact."

[26] See, *e.g.*, *Bowles* v. *Seminole Rock & Sand Co.*, 325 U.S. 410, 414; also *Federal C. C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 143 n. 6; *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U.S. 294, 325.

[27] *Best* v. *Humboldt Placer Mining Co.*, 371 U.S. 334, 336. *Ickes* v *Development Corp.*, 295 U.S. 639, 645.

"[U]sed to provide expansive coverage rather than the narrow coverage the Secretary now urges" (R. 89). Even if we were to assume that there are "counter-arguments" to the Secretary's construction, nevertheless, the court on judicial review should adopt a construction which will carry out the Secretary's intent, and not one which will defeat it. Also, if there are two constructions, one an expansive coverage and the other a narrow coverage, it was for the Secretary to decide which one to adopt, and his choice cannot be stricken down merely because the court would have made a different choice.

The opinion shows that the court became inextricably confused in its efforts to construe the two Orders. The confusion was caused in a large measure because the administrative record, other than the decisions of the Director of the Bureau of Land Management and the Secretary, was not before the court,[28] and the court was without the background, knowledge and expertise of the officers of the Department. Finally, it concluded without any administrative record support whatsoever, that the "Secretary's interpretation of the 1941 order [Order 8979] seems to us unreasonable and should not stand" (R. 90), but nowhere did it conclude that the Secretary's construction of PLO 487 was unreasonable, nor did it even say why it believed his construction of Order 8979 was unreasonable. Continuing in the same general language, the court below paid polite acknowledgment to the rules of agency construction of statutes and orders but brushed them aside as to Order 8979 with the comment that "Deference to agencies does not reach the extent of sanctioning irrational agency action, however; nor does it permit an agency to frustrate judicial review by issuing a series of confusing and possibly conflicting orders * * *" (R. 90).

But the court below pointed to no orders which it con-

[28] The district court could not try the case *de novo*. *United States* v. *Ohio Oil Co.*, 163 F. 2d 633 (C.A. 9, 1947), certiorari denied 333 U.S. 833; *Adams* v. *United States*, 318 F.2d 861, 866-867 (C.A. 9, 1963).

sidered were "confusing" or "possibly conflicting." The two Orders under review were not conflicting because they were issued at different times and for different purposes. What orders the Secretary had issued to "frustrate judicial review" the court did not say, and there are no such orders. If any of the orders were confusing to the court, it was because it did not understand them or the practices of the Department. But this was no ground for striking down the Secretary's construction of his own orders.[29]

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[29] That the Department has managed the Range all along on the basis of its being open to oil and gas leasing is indisputably shown by the way it has consistently applied to the Range the oil and gas regulation applicable to all wildlife refuges open to leasing. See 43 CFR § 192.9 (1947), 12 F.R. 7334; 20 F.R. 9009 (1955); 23 F.R. 227 (1963); Notice, August 2, 1958, 23 F.R. 5883. Even the regional administrator in Alaska suspended action on all pending lease offers on Range lands following the receipt of a letter dated August 31, 1953 from the Bureau of Land Management requesting all regional administrators to suspend action on pending lease applications on wildlife refuges while the Department was studying a possible revision of the regulation (App. 13A). The suspension was "so that the applicants may retain their priority of filing until a definite policy is established" (App. 15A); and was a proper exercise of the Secretary's powers. See *Dunn* v. *Ickes*, 72 U.S. App. D.C. 325 F.2d 36, 37 (1940), certiorari denied 311 U.S. 698. The amended regulation of December 8, 1955 even went so far as to provide that no oil and gas leases would be issued on an area in the Range as described in Appendix B (not involved in this action), unless "a complete and detailed operation program *** is approved by the Director, Fish and Wildlife Service" (20 F.R. 9009). Thus, the bulk of the Range continued to be open to leasing, subject to the detailed program for operations. Again, when the Secretary amended the regulation on January 8, 1958, he prohibited the filing of lease offers on game range lands and Alaska wildlife areas until 10 days after the Fish and Wildlife Service and the Bureau of Land Management had reached an agreement defining the lands which "shall not be subject to oil and gas leasing." This amendment went on to provide that all pending lease offers on game range lands and Alaska wildlife areas would continue to be suspended until the agreement was completed. 23 F.R. 227. The amendment of January 8, 1958, was the first action ever taken by the Secretary to close all of the Range to oil and gas leasing, and even then the lands were only temporarily closed. Finally, when the agreement was completed, notice was given that the agreement had closed the southern part of the Range to oil and gas leasing, but had left the balance open. It was stated in the notice that the pending lease offers on the area not closed, which had been suspended, would then be adjudicated. Certainly the regulation and amendments are neither confusing nor conflicting, nor were they issued to frustrate judicial review.

Furthermore, the court did not overturn the Secretary's decision on the ground that the Range was left open by the two Orders, but was closed to oil and gas leasing by a subsequent regulation or order. It simply overturned his decision because it disagreed with his construction of the two Orders.

The rights and interests of the first qualified applicants and their assigns are properly to be considered before a construction is given the Orders which will nullify their leases and deprive them of the fruits of their large investments and enormous risks. If there is any doubt as to the meaning of the two Orders, then the Secretary correctly follows his consistent construction of them, and other similar orders. Long-continued reliance by private persons in good faith upon the Secretary's interpretations and practices is a justly compelling reason for not disturbing an established administrative course of conduct.[30]

At this late date, any confusion or ambiguity in the Orders should be resolved in favor of the Secretary's construction, and the validity of the leases based on that construction. This most assuredly would be the rule were this an action by the United States to nullify the leases instead of being an action by respondents for the same purpose.[31]

G. *The owners of the leases declared to be nullities are indispensable parties.* Amici own many of the leases which the court below held are nullities. They are the real parties in interest, and the ones who stand to lose if the Secretary's decision is overturned. They had no notice or knowledge of this action until after the decision of the court below. The absence of indispensable parties may be raised *sua sponte*, for the question goes to a court's equitable jurisdiction. *Hooey* v. *Wilson*, 9 Wall. (76 U.S.) 501, 503-504. Amici's indispensability was brought to this Court's attention in the

[30] See, e.g., *McLaren* v. *Fleischer*, 256 U.S. 477, 481; also *Burnet* v. *Guggenheim*, 288 U.S. 280, 285-286; *Sorrells* v. *United States*, 287 U.S. 435, 446; *Provident Life & Trust Co.* v. *Mercer County*, 170 U.S. 593, 599; *Griffith* v. *Bogert*, 18 How. (59 U.S.) 158, 163.

[31] *Cole* v. *Young*, 351 U. S. 536, 556.

petition for certiorari (Pet. 2, n. 2; 17-20) and in amici's brief in support of the petition (pp. 11-12), and is argued again in the brief amicus of Standard Oil Company and Richfield Oil Corporation. Even if the latent question is not entirely jurisdictional, *Mallow* v. *Hinde*, 12 Wheat. (25 U.S.) 193, 198, nevertheless, a decision adverse to amici should not be entered in their absence, although one in favor of the Secretary would be proper. *Bourdieu* v. *Pacific Western Oil Co.*, 299 U.S. 65, 71.

CONCLUSION

For the reasons stated, amici curiae urge that the judgment be reversed.

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APPENDIX

1. TABLES SHOWING EXECUTIVE AND PUBLIC LAND ORDERS CONTAINING LANGUAGE IDENTICAL TO OR SUBSTANTIALLY THE SAME AS EXECUTIVE ORDER 8979 AND PUBLIC LAND ORDER 487 AND REPORTS OF MONTANA AND WYOMING LAND OFFICES ON OIL AND GAS LEASES ISSUED FOR LAND WITHDRAWN BY SUCH ORDERS.

TABLE I

EXECUTIVE AND PUBLIC LAND ORDERS CONTAINING LANGUAGE SUBSTANTIALLY THE SAME AS EXECUTIVE ORDER 8979

	Order	Date		Order	Date		Order	Date
1.	3209*	1-3-20	36.	4084	10-10-24	71.	4425	4-19-26
2.	3264*	4-29-20	37.	4093*	10-10-24	72.	4426	4-19-26
3.	3307*	7-13-20	38.	4100	11-7-24	73.	4430	4-23-26
4.	3351*	11-6-20	39.	4109	12-8-24	74.	4440	5-11-26
5.	3631*	2-3-22	40.	4163*	2-27-25	75.	4460	6-18-26
6.	3637*	2-16-22	41.	4177*	3-18-25	76.	4468	6-30-26
7.	3672*	5-8-22	42.	4190	4-3-25	77.	4474*	7-10-26
8.	3674*	5-17-22	43.	4212	4-25-25	78.	4478	7-15-26
9.	3775*	1-13-23	44.	4213	4-25-25	79.	4482	7-19-26
10.	3812*	4-9-23	45.	4219	5-8-25	80.	4494	8-12-26
11.	3825*	4-14-23	46.	4222	5-11-25	81.	4500	8-19-26
12.	3857	5-31-23	47.	4229	5-19-25	82.	4506	9-11-26
13.	3858	6-1-23	48.	4232	5-25-25	83.	4531	10-27-26
14.	3866	6-14-23	49.	4237	6-1-25	84.	4539	11-6-26
15.	3892	8-13-23	50.	4253	6-12-25	85.	4549	12-6-26
16.	3894	8-21-23	51.	4258	7-1-25	86.	4556	12-18-26
17.	3895*	8-23-23	52.	4262	7-3-25	87.	4573	1-28-27
18.	3909	9-23-23	53.	4267	7-16-25	88.	4582	2-12-27
19.	3914	10-5-23	54.	4297*	8-27-25	89.	4586	2-16-27
20.	3918	10-29-23	55.	4309	9-24-25	90.	4608	3-10-27
21.	3945	1-21-24	56.	4311	9-25-25	91.	4624	4-1-27
22.	3946*	1-21-24	57.	4322	10-15-25	92.	4638	4-26-27
23.	3954	2-6-24	58.	4323	10-15-25	93.	4654	5-23-27
24.	3958	2-15-24	59.	4326	10-20-25	94.	4657	6-6-27
25.	3960	2-18-24	60.	4327	10-21-25	95.	4682	7-4-27
26.	3967	3-5-24	61.	4346	11-23-25	96.	4693	7-18-27
27.	3971	3-12-24	62.	4348	11-28-25	97.	4695	7-25-27
28.	3998*	4-23-24	63.	4355	12-12-25	98.	4699	8-1-27
29.	4000	4-30-24	64.	4361	12-23-25	99.	4715	9-8-27
30.	4025*	6-12-24	65.	4366	1-14-26	100.	4725	9-27-27
31.	4041	6-27-24	66.	4388	3-6-26	101.	4726	9-27-27
32.	4042	7-2-24	67.	4404*	3-27-26	102.	4745	10-21-27
33.	4061	8-12-24	68.	4412	4-7-26	103.	4763	11-21-27
34.	4070*	9-4-24	69.	4423	4-19-26	104.	4764	11-21-27
35.	4082*	10-6-24	70.	4424	4-19-26	105.	4766	11-25-27

NOTE: All orders are collected in the Department of Interior Library, Washington, D. C. Orders marked with an asterisk (*) use the phraseology "are withdrawn from settlement, location, sale, entry, or other form of disposition [or disposal]." Other orders use the word "appropriation" in place of "disposition" or "disposal."

TABLE I—*Continued*

	Order	Date		Order	Date		Order	Date
106.	4798	1-23-28	159.	5343	5-6-20	212.	5920	9-15-32
107.	4827	3-12-28	160.	5346	5-9-30	213.	5942	10-29-32
108.	4828	3-12-28	161.	5354	5-27-30	214.	5949*	11-16-32
109.	4843	3-23-28	162.	5395	7-16-30	215.	5958	12-8-32
110.	4844	3-23-28	163.	5450	9-25-30	216.	6014	2-6-33
111.	4867*	4-28-28	164.	5452	9-25-30	217.	6054	2-28-33
112.	4882	5-16-28	165.	5465	10-20-30	218.	6055	2-8-33
113.	4900	6-2-28	166.	5483	11-14-30	219.	6075	3-15-33
114.	4914	6-23-28	167.	5484	11-14-30	220.	6076	3-15-33
115.	4921	6-29-28	168.	5504	12-4-30	221.	6077	3-15-33
116.	4942	7-30-28	169.	5531	1-13-31	222.	6082	3-25-33
117.	4957	9-3-28	170.	5538	1-23-31	223.	6087	3-28-33
118.	4960	9-12-28	171.	5542	1-27-31	224.	6119	5-2-33
119.	4962	9-17-28	172.	5547	1-31-31	225.	6120	5-2-33
120.	4964	9-17-28	173.	5548	1-31-31	226.	6122	5-2-33
121.	4980	10-20-28	174.	5550*	2-6-31	227.	6123	5-2-33
122.	4997	11-19-28	175.	5551	2-7-31	228.	6124	5-2-33
123.	5003*	12-3-28	176.	5555	2-11-31	229.	6153	6-3-33
124.	5029	1-18-29	177.	5558	2-16-31	230.	6179	6-16-33
125.	5030	1-18-29	178.	5571	3-5-31	231.	6192	7-3-33
126.	5031	1-18-29	179.	5581*	3-17-31	232.	6258	7-3-33
127.	5085	3-28-29	180.	5585	3-30-31	233.	6266	9-6-33
128.	5091	4-9-29	181.	5596	4-9-31	234.	6267	9-6-33
129.	5098	4-23-29	182.	5603	4-20-31	235.	6268	9-6-33
130.	5109	5-13-29	183.	5623	5-15-31	236.	6286	9-14-33
131.	5115	5-15-29	184.	5663	5-28-31	237.	6287	9-14-33
132.	5116	5-15-29	185.	5640	6-8-31	238.	6288	9-14-33
133.	5121	5-18-29	186.	5652	6-18-31	239.	6432	11-16-33
134.	5125*	5-23-29	187.	5656	6-22-31	240.	6473	12-4-33
135.	5140	6-20-29	188.	5664	7-2-31	241.	6491	12-12-33
136.	5144	6-25-29	189.	5667	7-6-31	242.	6496	12-14-33
137.	5165	7-26-29	190.	5668	7-6-31	243.	6499	12-15-33
138.	5166	7-26-29	191.	5671*	7-29-31	244.	6574	1-24-34
139.	5172	8-9-29	192.	5681	8-12-31	245.	6588	2-6-34
140.	5202	10-7-29	193.	5682	8-12-31	246.	6604	2-16-34
141.	5208	10-12-29	194.	5687	8-18-31	247.	6707	5-9-34
142.	5218	11-4-29	195.	5709	9-11-31	248.	6957	2-4-35
143.	5234	12-4-29	196.	5729	10-2-31	249.	6958	2-4-35
144.	5241	12-16-29	197.	5789	2-2-32	250.	7023	4-22-35
145.	5251	12-31-29	198.	5790	2-2-32	251.	7035	5-6-35
146.	5255	12-31-29	199.	5791	2-2-32	252.	7172	9-4-35
147.	5257	1-9-30	200.	5792	2-2-32	253.	7320	3-19-36
148.	5261	1-20-30	201.	5796	2-10-32	254.	7331	4-3-36
149.	5287	2-25-30	202.	5805	2-23-32	255.	7364	5-6-36
150.	5297	3-10-30	203.	5807	2-25-32	256.	7417	7-17-36
151.	5300	3-11-30	204.	5815	3-9-32	257.	7425	8-1-36
152.	5304	3-14-30	205.	5827	3-28-32	258.	8004	11-12-38
153.	5309	3-24-30	206.	5828	3-30-32	259.	8102	4-29-39
154.	5315	3-26-30	207.	5829	3-30-32	260.	8343	2-10-40
155.	5323	4-10-30	208.	5843	4-28-32	261.	8505*	8-7-40
156.	5328	4-15-30	209.	5862	6-23-32	262.	8733	4-10-41
157.	5341	5-2-30	210.	5886	7-12-32	263.	8857*	8-19-41
158.	5342	5-6-30	211.	5894	7-26-32	264.	PLO 746*	8-17-51

TABLE II

EXECUTIVE AND PUBLIC LAND ORDERS CONTAINING LANGUAGE IDENTICAL TO OR SUBSTANTIALLY THE SAME AS PUBLIC LAND ORDER 487

	Order	Date		Order	Date		Order	Date
1.	3208	1-2-20	46.	3658	4-4-22	91.	4387	3-5-26
2.	3242	3-6-20	47.	3661	4-13-22	92.	4397	3-17-26
3.	3263	4-28-20	48.	3678	5-20-22	93.	4411	4-1-26
4.	3269	5-1-20	49.	3684	5-25-22	94.	4415	4-10-26
5.	3271	5-11-20	50.	3685	5-27-22	95.	4433	4-24-26
6.	3278	5-28-20	51.	3729	8-31-22	96.	4449	5-29-26
7.	3282	6-12-20	52.	3737	9-23-22	97.	4456	6-7-26
8.	3284	6-18-20	53.	3743	9-30-22	98.	4456-A	6-8-26
9.	3291	6-26-20	54.	3747	10-16-22	99.	4491	8-3-26
10.	3295	6-28-20	55.	3748	10-23-22	100.	4515	9-23-26
11.	3297	6-30-20	56.	3755	11-17-22	101.	4522	10-14-26
12.	3305	7-10-20	57.	3763	12-9-22	102.	4546	11-29-26
13.	3308	7-14-20	58.	3766	12-19-22	103.	4554	12-17-26
14.	3309	7-17-20	59.	3781	1-31-23	104.	4559	12-30-26
15.	3314	7-26-20	60.	3783	2-8-23	105.	4578	1-29-27
16.	3328	9-23-20	61.	3800	3-2-23	106.	4599	3-1-27
17.	3333	10-3-20	62.	3813	4-9-23	107.	4613	3-14-27
18.	3335	10-7-20	63.	3814	4-9-23	108.	4616	3-18-27
19.	3345	10-23-20	64.	3815	4-9-23	109.	4633	4-18-27
20.	3346	10-26-20	65.	3832	5-4-23	110.	4631	4-15-27
21.	3355	11-19-20	66.	3889	8-13-23	111.	4652	5-18-27
22.	3373	12-22-20	67.	3891	8-13-23	112.	4677	6-29-27
23.	3387	1-22-21	68.	3896	8-31-23	113.	4685	7-7-27
24.	3388	1-22-21	69.	3898	9-6-23	114.	4700	8-5-27
25.	3393	1-28-21	70.	3911	10-4-23	115.	4702	8-10-27
26.	3394	1-28-21	71.	3924	11-9-23	116.	4710	8-29-27
27.	3395	1-28-21	72.	3948	1-25-24	117.	4732	9-30-27
28.	3405	2-12-21	73.	3975	3-21-24	118.	4762	11-19-27
29.	3410	2-22-21	74.	3984	4-2-24	119.	4774	11-29-27
30.	3411	2-22-21	75.	4014	5-22-24	120.	4781	12-14-27
31.	3412	2-25-21	76.	4033-A	6-24-24	121.	4785	12-17-27
32.	3450	5-3-21	77.	4106	11-24-24	122.	4786	12-17-27
33.	3451	5-3-21	78.	4146	2-25-25	123.	4796	1-19-28
34.	3465	5-19-21	79.	4149	2-6-25	124.	4806	2-11-28
35.	3509	7-5-21	80.	4178	3-19-25	125.	4810	2-14-28
36.	3537	8-17-21	81.	4209	4-22-25	126.	4812	2-21-28
37.	3552	9-23-21	82.	4227	5-16-25	127.	4845	3-26-28
38.	3561	10-18-21	83.	4280	8-7-25	128.	4848	4-2-28
39.	3617	1-13-22	84.	4289	8-22-25	129.	4857	4-16-28
40.	3626	1-25-22	85.	4303	9-17-25	130.	4870	5-3-28
41.	3644	2-28-22	86.	4317	10-2-25	131.	4872	5-3-28
42.	3649	3-20-22	87.	4342	11-12-25	132.	4873	5-3-28
43.	3650	3-20-22	88.	4364	1-7-26	133.	4888	5-25-28
44.	3651	3-22-22	89.	4375	1-30-26	134.	4896	5-28-28
45.	3655	3-29-22	90.	4378	2-2-26	135.	4901	6-4-28

NOTE: All orders are collected in the Department of Interior Library, Washington, D. C. After 1942, orders of withdrawal were denominated Public Land Orders and the series was renumbered.

TABLE II—*Continued*

	Order	Date		Order	Date		Order	Date
136.	4916	6-23-28	189.	5462	10-14-30	242.	6441	11-21-33
137.	4920	6-26-28	190.	5472	10-27-30	243.	6541	12-28-33
138.	4939	7-23-28	191.	5478	11-8-30	244.	6544	12-30-33
139.	4941	7-27-28	192.	5479	11-15-30	245.	6583	2-3-34
140.	4951	8-17-28	193.	5495	11-22-30	246.	6587	2-6-34
141.	4953	8-20-28	194.	5500	12-2-30	247.	6592	2-9-34
142.	4963	9-17-28	195.	5511	12-11-30	248.	6607	2-20-34
143.	5004	12-3-28	196.	5512	12-11-30	249.	6616	2-26-34
144.	5005	12-5-28	197.	5534	1-2-31	250.	6618	2-26-34
145.	5025	1-14-29	198.	5559	2-16-31	251.	6619	2-26-34
146.	5033	1-19-29	199.	5593	4-4-31	252.	6626	3-5-34
147.	5037	1-28-29	200.	5594	4-6-31	253.	6628	3-5-34
148.	5038	2-2-29	201.	5601	4-16-31	254.	6629	3-5-34
149.	5040	2-4-29	202.	5611	4-24-31	255.	6644	3-14-34
150.	5041	2-9-29	203.	5629	5-21-31	256.	6645	3-14-34
151.	5108	5-10-29	204.	5631	5-26-31	257.	6667	4-5-34
152.	5117	5-16-29	205.	5650	6-18-31	258.	6671	4-7-34
153.	5118	5-16-29	206.	5654	6-20-31	259.	6672	4-7-34
154.	5138	6-17-29	207.	5672	8-3-31	260.	6681	4-17-34
155.	5141	6-20-29	208.	5683	8-21-31	261.	6696	5-2-34
156.	5176	8-23-29	209.	5684	8-21-31	262.	6698	5-2-34
157.	5182	8-29-29	210.	5694	8-25-31	263.	6704	5-8-34
158.	5190	9-11-29	211.	5702	9-1-31	264.	6706	5-9-34
159.	5194	9-16-29	212.	5711	9-14-31	265.	6714	5-23-34
160.	5196	9-21-29	213.	5714	9-15-31	266.	6721	5-25-34
161.	5203	10-8-29	214.	5726	9-26-31	267.	6733	6-7-34
162.	5214	10-30-29	215.	5732	10-14-31	268.	6740	6-15-34
163.	5222	11-12-29	216.	5754	12-7-31	269.	6741	6-15-34
164.	5229	11-25-29	217.	5755	12-10-31	270.	6761	6-29-34
165.	5233	12-4-29	218.	5794	2-5-32	271.	6762	6-29-34
166.	5249	12-31-29	219.	5838	4-18-32	272.	6774	6-30-34
167.	5219	11-5-29	220.	5846	5-2-32	273.	6781	6-30-34
168.	5270	2-4-30	221.	5846	6-23-32	274.	6795	7-26-34
169.	5273	2-7-30	222.	5889	7-16-32	275.	6796	7-27-34
170.	5274	2-7-30	223.	5898	8-2-32	276.	6798	7-27-34
171.	5275	2-7-30	224.	5902	8-8-32	277.	6802	8-4-34
172.	5278	2-7-30	225.	5907	8-18-32	278.	6804	8-4-34
173.	5280	2-17-30	226.	5928	9-29-32	279.	6805	8-4-34
174.	5292	3-5-30	227.	5929	10-1-32	280.	6807	8-4-34
175.	5319	4-7-30	228.	6002	1-18-33	281.	6815	8-10-34
176.	5326	4-14-30	229.	6006	1-23-23	282.	6816	8-10-34
177.	5344	5-8-30	230.	6019	2-7-33	283.	6817	8-10-34
178.	5352	5-23-30	231.	6025	2-14-33	284.	6819	8-11-34
179.	5361	6-4-30	232.	6040	2-20-33	285.	6822	8-13-34
180.	5362	6-4-30	233.	6113	4-22-33	286.	6827	8-21-34
181.	5364	6-5-30	234.	6116	4-29-33	287.	6833	8-28-34
182.	5380	6-24-30	235.	6143	5-23-33	288.	6842	9-11-34
183.	5389	7-7-30	236.	6184	6-26-33	289.	6843	9-11-34
184.	5397	7-18-30	237.	6205	7-14-33	290.	6844	9-11-34
185.	5401	7-23-30	238.	6206	7-16-33	291.	6845	9-11-34
186.	5407	7-25-30	239.	6276	9-8-33	292.	6851	9-22-34
187.	5428	8-20-30	240.	6277	9-8-33	293.	6853	9-22-34
188.	5451	9-25-30	241.	6331	10-11-33	294.	6863	10-3-34

TABLE II—*Continued*

	Order	Date		Order	Date		Order	Date
295.	6867	10-5-34	335.	7623	5-29-37	374.	8540	9-14-40
296.	6883	10-22-34	336.	7628	6-8-37	375.	8573	10-21-40
297.	6884	10-23-34	337.	7647	6-28-37	376.	8577	10-29-40
298.	6888	10-29-34	338.	7691	8-17-37	377.	8591	11-8-40
299.	6890	10-30-34	339.	7695	8-23-27	378.	8592	11-12-40
300.	6908	11-21-34	340.	7705	9-11-37	380.	8598	11-18-40
301.	6909	11-21-34	341.	7707	9-11-37	381.	8600	11-20-40
302.	6912	12-3-34	342.	7713	9-23-27	382.	8655	1-30-41
303.	6946	1-11-35	343.	7722	10-8-37	383.	8646	1-22-41
304.	6973	2-19-35	344.	7723	10-8-37	384.	8691	2-20-41
305.	7032	5-1-35	345.	7740	11-15-37	385.	8732	4-8-41
306.	7045	5-15-35	346.	7748	11-20-37	386.	8733	4-10-41
307.	7079	6-17-35	347.	7770	12-14-37	387.	8739	4-21-41
308.	7112	7-24-35	348.	7925	7-5-38	388.	8776	6-10-41
309.	7135	8-9-35	349.	7951	8-12-38	389.	9028	1-20-42
310.	7178	9-6-35	350.	7960	8-22-38	390.	9101	3-16-42
311.	7220	10-30-35	351.	7993	10-27-38	391. PLO	23	8-7-42
312.	7270	1-7-36	352.	8009	11-18-38	392.	46	10-8-42
313.	7303	2-25-36	353.	8010	11-18-38	393.	69	12-15-42
314.	7309	2-28-36	354.	8020	12-2-38	394.	107	3-31-43
315.	7339	4-10-36	355.	8021	12-5-38	395.	156	8-4-43
316.	7386	6-8-36	356.	8072	3-21-39	396.	225	4-21-44
317.	7430	8-17-36	357.	8085	4-11-39	397.	226	4-21-44
318.	7435	8-19-36	358.	8089	4-13-39	398.	294	8-13-45
319.	7441	8-29-36	359.	8101	4-28-39	399.	317	4-15-46
320.	7442	8-31-36	360.	8192	7-5-39	400.	324	8-14-46
321.	7448	9-12-36	361.	8216	7-25-39	401.	371	5-26-47
322.	7453	9-23-36	362.	8299	12-4-39	402.	486	6-15-48
323.	7504	12-11-36	363.	8325	1-22-40	403.	487	6-16-48
324.	7505	12-11-36	364.	8330	1-24-40	404.	513	8-12-48
325.	7510	12-11-36	365.	8332	1-25-40	405.	540	12-21-48
326.	7515	12-16-36	366.	8342	2-9-40	406.	636	3-18-50
327.	7520	12-18-36	367.	8344	2-10-40	407.	642	5-9-50
328.	7523	12-21-36	368.	8397	4-23-40	408.	664	8-28-50
329.	7544	1-29-37	369.	8407	5-10-40	409.	713	4-16-51
330.	7555	2-17-37	370.	8411	5-16-40	410.	737	7-28-51
331.	7558	2-23-27	371.	8468	7-1-40	411.	761	10-25-51
332.	7596	3-31-37	372.	8480	7-12-40	412.	797	1-25-52
333.	7601	4-7-37	373.	8492	7-23-40	413.	814	4-1-52
334.	7622	5-29-37						

TABLE III

EXECUTIVE AND PUBLIC LAND ORDERS CONTAINING LANGUAGE BARRING MINERAL LEASING

	Order	Date		Order	Date		Order	Date
1.	8508	8-8-40	48.	480	6-2-48	95.	656	8-15-50
2.	PLO 12	7-20-42	49.	497	7-13-48	96.	659	8-24-50
3.	61	11-8-42	50.	509	7-30-48	97.	660	8-24-50
4.	84	1-28-43	51.	510	8-4-48	98.	662	8-28-50
5.	89	2-10-43	52.	511	8-4-48	99.	663	8-28-50
6.	92	2-19-43	53.	515	8-13-48	100.	665	8-28-50
7.	97	3-16-43	54.	516	8-17-48	101.	669	9-1-50
8.	144	6-24-43	55.	524	10-20-48	102.	671	9-11-50
9.	155	8-4-43	56.	533	11-24-48	103.	672	10-3-50
10.	158	8-12-43	57.	534	11-24-48	104	673	10-3-50
11.	175	9-29-43	58.	544	1-4-49	105.	676	10-3-50
12.	213	3-10-44	59.	545	1-7-49	106.	677	10-13-50
13.	233	6-3-44	60.	546	1-7-49	107.	678	10-24-50
14.	239	6-28-44	61.	547	1-19-49	108.	689	11-20-50
15.	249	11-17-44	62.	548	1-6-49	109.	690	11-22-50
16.	256	1-4-45	63.	553	2-7-49	110.	692	12-8-50
17.	261	1-24-45	64.	554	2-7-49	111.	693	12-12-50
18.	265	3-8-45	65.	555	2-8-49	112.	697	2-2-51
19.	266	3-16-45	66.	576	3-29-49	113.	706	3-15-51
20.	268	3-20-45	67.	557	3-29-49	114.	709	4-10-51
21.	275	4-23-45	68.	582	4-11-49	115.	712	4-16-51
22.	277	5-14-45	69.	586	5-20-49	116.	714	4-20-51
23.	279	5-22-45	70.	587	5-23-49	117.	[redacted]	5-15-51
24.	280	5-22-45	71.	589	6-9-49	118.	722	5-23-51
25.	281	5-29-45	72.	592	6-16-49	119.	724	5-24-51
26.	283	5-31-45	73.	593	7-8-49	120.	726	6-6-51
27.	290	7-25-45	74.	595	7-18-49	121.	727	6-6-51
28.	293	8-25-45	75.	601	8-10-49	122.	730	6-25-51
29.	316	3-5-46	76.	602	8-12-49	123.	731	6-25-51
30.	318	5-13-46	77.	604	9-3-49	124.	733	7-18-51
31.	322	7-3-46	78.	605	9-7-49	125.	738	7-28-51
32.	329	10-17-46	79.	606	9-13-49	126.	739	7-28-51
33.	334	12-19-46	80.	609	10-10-49	127.	751	8-29-51
34.	349	2-12-47	81.	613	10-19-49	128.	754	9-14-51
35.	386	7-31-47	82.	615	11-8-49	129.	755	9-21-51
36.	419	10-21-47	83.	619	12-2-49	130.	765	11-23-51
37.	431	12-19-47	84.	626	12-16-49	131.	770	12-12-51
38.	435	1-12-48	85.	627	1-11-50	132.	774	12-19-51
39.	436	1-13-48	86.	628	1-13-50	133.	776	12-29-51
40.	439	1-20-48	87.	629	1-13-50	134.	778	12-29-51
41.	443	1-30-48	88.	637	4-7-50	135.	780	12-29-51
42.	460	4-1-48	89.	639	4-26-50	136.	781	12-29-51
43.	461	4-1-48	90.	640	5-3-50	137.	783	1-2-52
44.	462	4-1-48	91.	646	5-10-50	138.	786	1-5-52
45.	463	4-2-48	92.	649	6-12-50	139.	792	1-9-52
46.	474	4-30-48	93.	651	6-26-50	140.	788	1-10-52
47.	478	5-7-48	94.	652	6-26-50	141.	790	1-16-52

NOTE: All orders are collected in the Department of the Interior Library, Washington, D. C. After 1942, orders of withdrawal were denominated Public Land Orders and the series was renumbered.

TABLE III—*Continued*

	Order	Date		Order	Date		Order	Date
142.	794	1-23-52	153.	827	5-16-52	164.	859	7-29-52
143.	800	2-1-52	154.	833	5-21-52	165.	861	9-3-52
144.	802	2-5-52	155.	835	5-23-52	166.	868	10-21-52
145.	805	2-12-52	156.	837	6-19-52	167.	869	10-24-52
146.	808	2-27-52	157.	843	6-24-52	168.	871	11-5-52
147.	813	3-18-52	158.	844	6-24-52	169.	873	11-14-52
148.	815	4-8-52	159.	848	7-1-52	170.	874	11-28-52
149.	818	4-14-52	160.	849	7-1-52	171.	875	12-10-52
150.	821	4-28-52	161.	851	7-1-52	172.	876	12-10-52
151.	822	5-9-52	162.	854	7-10-52	173.	877	12-10-52
152.	823	5-9-52	163.	856	7-21-52			

TABLE IV

OIL AND GAS LEASES ISSUED ON LANDS WITHDRAWN BY ORDERS CONTAINING LANGUAGE IDENTICAL TO OR SUBSTANTIALLY THE SAME AS EXECUTIVE ORDER 8979 AND PUBLIC LAND ORDER 487

1. Lands in the Fort Peck Dam and Reservoir Project, Montana, were withdrawn at different dates by separate orders. The bulk of the lands were withdrawn by Executive Order 6491, December 12, 1933; Executive Order 6707, May 9, 1934; and Executive Order 7331, April 8, 1936, 1 F.R. 121. Each order is substantially the same as Order 8979. All are in force. They provide that the lands are "withdrawn from settlement, location, sale, entry, and all forms of appropriation." At least 264 leases were issued on lands withdrawn by these orders up to January 8, 1958, the effective date of the amendment to the Secretary's leasing regulation. See Memorandum, May 4, 1964, State Director, Bureau of Land Management, Montana, *infra*, 10A.

The same lands were also subject to the top withdrawal for the Charles M. Russell Game Range, formerly the Fort Peck Game Range, established by Executive Order 7509, December 11, 1936, 1 F.R. 2482. The Game Range withdrawal provided that nothing in the order would prevent the leasing of oil and gas.

Prior to March 22, 1956, about 476 oil and gas leases had been issued on all of the Fort Peck Game Range lands. H. Rept. No. 1941, 84th Cong., 2d Sess., March 22, 1956, pp. 3-4, 8, Appendix, p. 18, to report. Since January 8, 1958, no new oil and gas leases have been issued, and many of the pre-1958 leases have terminated. However, leasing is halted because of 43 CFR § 192.9 (now 43 CFR § 3120.3-3), and not because of the withdrawals for the Fort Peck Dam and Reservoir Project. See Memorandum, May 4, 1964, State Director, Bureau of Land Management, Montana, *infra*, 10A-11A.

2. Executive Order 5711, September 14, 1931, withdrew about 90,000 acres for classification and in aid of legislation. The language of withdrawal is identical to PLO 487. The order is in force. A total of 80 oil and gas leases were issued for the area and about 12 are outstanding. See Memorandum, May 4, 1964, State Director, Bureau of Land Management, Montana, *infra*, 10A.

3. Executive Order 6441, November 21, 1933, withdrew approximately 5200 acres for classification and in aid of legislation. The language of withdrawal is identical to PLO 487. The order is in force. Between March 1, 1954 and November 1, 1957, six leases covering about 1022 acres were issued and between January 1, 1959 and December 1, 1961, eight leases covering 2512 acres were issued. See Memorandum, May 4, 1964, State Director, Wyoming, *infra*, 11A.

4. Executive Order 7491, November 17, 1936, 1 F.R. 1866, withdrew about 4240 acres for an Army target range. The language of withdrawal is identical to PLO 487. The order is in force. Two leases were issued in 1953 (302 acres); one each in 1954 and 1955 (720 acres); three in 1960 (480 acres), one each in 1961 and 1962 (728 acres), and one in 1963 (1211 acres). See Memorandum,

TABLE IV—*Continued*

May 4, 1964, State Director, Bureau of Land Management, Wyoming, *infra*, 12A.

5. Executive Order 7960, August 22, 1938, 3 F.R. 2072 withdrew lands for the Tongue River Reservoir Site, Montana. The language of withdrawal is identical to PLO 487. The order is in force. There were eight leases issued for the lands, none of which are now outstanding. See Memorandum, May 4, 1964, State Director, Bureau of Land Management, Montana, *infra*, 10A.

6. Executive Order 8101, April 28, 1939, 4 F.R. 1725, also withdrew lands for an Army target range. The language of withdrawal is identical to PLO 487. The order is in force. Three leases have been issued for a total of 1560 acres. See Memorandum, May 4, 1964, State Director, Bureau of Land Management, Wyoming, *infra*, 11A.

7. Executive Order 8592, November 12, 1940, 5 F.R. 4478, withdrew about 1400 acres as an addition to the Bowdoin National Wildlife Refuge established by Executive Order 7295, February 14, 1936, with the exception that the lands were in Petroleum Reserve No. 53, Montana No. 6, and were subject to competitive development. The language of withdrawal is identical to PLO 487. Two leases were issued for these lands. See also H. Rept. No. 1941, 84th Cong., 2d Sess., March 22, 1956, p. 8, Appendix p. 18 to report.

8. Executive Order 8924, October 25, 1941, 6 F.R. 5507, withdrew approximately 2960 acres of land for the Creedman Coulee National Wildlife Refuge, Montana. The order provides that the lands are "* * * withdrawn from all forms of appropriation under the public-land laws, including the mining laws * * *." The order is in force. Three oil and gas leases were issued for the area. Memorandum, May 4, 1964, State Director, Bureau of Land Management, Montana, *infra*, 10A; See H. Rept. No. 1941, *supra*, Appendix A. p. 15 to report.

9. Executive Order 9132, April 13, 1942, 7 F.R. 2827, withdrew approximately 7475 acres for the Fort Peck Dam and Reservoir Project, Montana. The language of withdrawal is identical to Executive Order 8924 (Item 8, *supra*). The order is in force. A total of 17 oil and gas leases were issued for the area. Memorandum, May 4, 1964, State Director, Bureau of Land Management, Montana, *infra*, 10A.

TABLE IV—*Continued*

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

State Office
1245 North 39th Street
Billings, Montana
59101

May 4, 1964

Memorandum

To: Director, Bureau of Land Management, Washington, D. C. 20240

From: State Director, Montana

Subject: Oil and Gas Leasing on Withdrawn Land FD May 4, 1964, Your Memorandum April 23, 1964, Ref: 3120 (6.30c)

Below is a tabulation supplying the information requested in the subject named memorandum.

OG Offers Current	Existing Leases	Relinquished, Terminated and Expired Leases
	EO 6491	
4	0	134
	EO 6707	
3	3	128
	EO 7331	
0	1	2
	EO 9132	
0	0	17
	EO 8924	
0	0	3
	EO 5711	
0	12	80
	EO 7960	
1	0	8
	EO 8592	
0	0	2

The new records, which are in use in the Montana Land Office, are not designed to retain a history of applications of any nature except withdrawals. An application appears only on the plat and if either rejected or withdrawn it is removed and its history is then lost.

A word of explanation is in order concerning the Executive Orders withdrawing lands for the Fort Peck Dam. The entire area withdrawn for the Fort Peck Dam is top withdrawn for the Charles M. Russell Game Refuge, formerly Fort Peck Game Range. Before 43 CFR 3120.3-3 (formerly 192.9) became effective, leases were issued on the game range and Fort Peck Dam lands.

TABLE IV—*Continued*

This accounts for the large number of expired and terminated leases in this area. Today, leases are not being issued because of the game range withdrawal, not because of the Fort Peck Dam withdrawal.

/s/ E. D. ROWLAND

UNITED STATES GOVERNMENT

TO: Director

DATE: MAY 4, 1964

FROM: State Director, Wyoming

In reply refer to:
3120 (230)
Your reference:
3120 (6.03e)

SUBJECT: Oil and Gas Leasing on withdrawn Lands
FD May 4, 1964

We find no applications for oil and gas leases or issued leases on lands covered by E. O. 5949 or E. O. 7425.

The following is a list of leases issued on lands covered by E. O. 6441, dated November 21, 1933, which is still in effect.

Serial No.	Issued	Lessee	Acreage under E. O.	Terminated
Wyoming—				
025886	3-1-54	F. P. Fuller	375.89	2-26-57
028198	8-1-54	Wm. & Elsie Schmidke	147.36	7-31-57
044313-B	11-1-56	Tom Palmer, Inc.	38.79	10-31-61
049916	9-1-57	Amerada Petroleum Co.	80.00	8-1-62
053771	9-1-57	Elaine Maulsolf	40.00	9-1-60
053871	11-1-57	Joe W. Lackey	40.00	10-31-60
071581	1-1-59	A. T. Wallace	394.04	12-31-61
075909	4-1-59	C. A. McDade	759.66	3-31-63
075909-A	4-1-59	C. A. McDade	80.00	3-31-63
075910	4-1-59	Harriett D. Elliott	520.00	3-31-63
076752	5-1-59	Loma Corporation	80.00	still in eff.
077650	8-1-59	E. V. Stipp	40.00	7-31-62
089457	2-1-60	K. J. Bules	40.00	1-31-63
0161169	12-1-61	Chester & Stella Fankhauser	597.78	11-30-63

Under E. O. 7491, dated November 14, 1936, certain lands were withdrawn for the Lovell, Wyoming Target Range. The lands have been separated into a "danger zone" and lands outside the danger zone. The E. O. is still in effect.

We have one pending application for an oil and gas lease within and without the danger zone: Wyoming 0285594, filed 10-31-63 for 1152.22 acres by Woreed Oil Company.

TABLE IV—*Continued*

Leases which have issued on lands outside the danger zone are as follows:

Serial No.	Issued	Lessee	Acreage
Wyoming—			
013825	4-1-53	F. B. Long	80.00
013825-A	4-1-53	Mohawk Petroleum Corp.	222.00
015046	9-1-54	Union Oil Co. of Calif.	415.58
030853	2-1-55	Woreed Oil Company	305.00
091832-A	3-1-60	Glenn W. Hart	320.00
091832-C	3-1-60	Margaret K. Paumier	80.00
091852-D	3-1-60	Samuel Berman	80.00
0105220	2-1-61	Woreed Oil Company	20.00
0183905	5-1-62	The Pure Oil Company	708.59
0262347	9-1-63	Woreed Oil Company	1210.75

E. O. 8101, dated April 28, 1939, withdrew lands for the Lander, Wyoming Target Range. This order is still in effect and the following leases have issued.

Serial No.	Issued	Lessee	Acreage
Wyoming—			
015395	7-1-61	Cities Service Petroleum Co.	640.00
0135400	3-1-62	Bridwell Oil Company	760.00
0266690	10-1-63	James R. Learned	160.00

/s/ Ed. Pierson

2. CORRESPONDENCE AND MEMORANDA OF THE DEPARTMENT OF THE INTERIOR AND THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES RELATING TO OIL AND GAS LEASING OF THE KENAI MOOSE RANGE.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

August 31, 1953

Memorandum

To: Regional Administrators, Regions I to VII, inclusive; Managers, Land and Land and Survey Offices

From: Director, Bureau of Land Management

Subject: Oil and Gas Offers in Fish and Wildlife Refuges

A study is now being conducted by Assistant Secretary Lewis, and all the Bureaus involved, of a possible revision of policy and regulations in the issuance of oil and gas leases within wildlife refuges, both on the public domain and acquired lands. Pending the completion of this study and the possible revision of existing regulations, you will suspend action on all pending oil and gas lease offers and applications for lands within such refuges. Where an offer or an application embraces land partly within and partly without a wildlife refuge, you will suspend action on the portion of the offer or application within the refuge and process, in the absence of any objections, the offer or application to lease as to the land without the refuge.

Action on pending appeals from rejection of such offers or applications will be suspended until the study is completed, a policy is established and the regulations revised in accordance therewith. Likewise, applications of this nature which have been held for rejection will also be suspended pending the completion of this study.

/s/WM. ZIMMERMAN, JR.
Acting Director

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

February 15, 1954

Memorandum

To: Assistant Secretary Lewis

From: Director

Subject: Oil and Gas Leasing for Wildlife Refuge Lands

The matter of establishing a new policy on the issuance of oil and gas leases for fish and wildlife refuge lands has been under consideration for some time and discussed at several meetings with you, with representatives of this office, the Fish and Wildlife Service, and the Geological Survey. The present policy on issuing leases for wildlife refuge lands is reflected in the existing regulation (43 CFR 192.9), which reads as follows:

"No noncompetitive oil and gas lease under the act will be issued for lands within a wildlife refuge (a) unless those lands are subjected to an approved cooperative or unit plan, and (b) unless the lease contains a provision which prohibits drilling or prospecting on the refuge lands except when consented to by the Secretary of the Interior upon the advice of the Fish and Wildlife Service. Subject to the same two conditions, competitive leases also may issue for refuge lands. Even if these conditions are not met, competitive leases may nevertheless issue if Fish and Wildlife Service reports that oil and gas development may be conducted without destroying the usefulness of the lands as a sanctuary for wildlife, or, in the absence of such a report, wherever the Secretary determines that the national interest in securing the contemplated oil and gas production

outweighs the importance of maintaining the refuge as a sanctuary for wildlife."

The suggested change in policy is to issue oil and gas leases with a stipulation that no drilling operations will be permitted (a) unless the lands are subjected to an approved cooperative or unit plan, and (b) except when consented to by the Secretary of the Interior, upon the advice of the Fish and Wildlife Service.

The question to be determined, therefore, is whether leases should issue prior to the approval of a cooperative or unit plan, or whether the approval of such a plan should be a condition precedent to the issuance of leases. To leave the regulations without change would practically mean, in most instances, that applications for oil and gas leases would be rejected, inasmuch as few lessees or operators would be able to submit a cooperative or unit plan for approval without having assurance of holding the necessary leases embracing lands logically subject to unitization. The question is one of policy, whether we wish to carry out the provisions of the Mineral Leasing Act to encourage the prospecting, development and production of oil and gas in all areas of our public lands, on the one hand, or whether we want to take every step to preserve our fish and wildlife land areas without interference from any other use of the lands. There are merits to both contentions. However, multiple use of lands without material interference for the purpose for which such lands are withdrawn or reserved is a major policy in the management of public lands. Moreover, it is essential to encourage private industry to ascertain where our oil reserves are and the Government to encourage private capital to test "wild-cat" areas in order that we may discover new sources of our oil and gas supply.

At the present time, action on oil and gas offers and applications are suspended by memorandum of August 31, 1953, so that the applicants may retain their priority of filing until a definite policy is established.

In view of this situation, it is recommended that:

(1) Regulations be amended to permit the issuance of oil and gas leases on wildlife refuge lands upon receipt of a report from the Fish and Wildlife Service that leasing will not materially interfere with the use of the land as a wildlife refuge, or be inconsistent with such use;

(2) That all such leases contain a stipulation that permission will not be granted to drill anywhere on the land embraced in the wildlife refuge unless (a) those lands are subjected to an approved cooperative or unit plan, (b) that such lease will contain a provision which prohibits drilling or prospecting on the refuge lands except when consented to by the Secretary of the Interior upon the advice of the Fish and Wildlife Service, and (c) that prior to the issuance of such a lease, the lessee will sign such other stipulations for the protection of the wildlife refuge lands as may be required by the Fish and Wildlife Service;

(3) That lands within a structure of a known oil and gas field, as defined by the Geological Survey, in wildlife refuge lands be offered for leasing by competitive bidding and contain such stipulations as the Fish and Wildlife Service may require for the protection of the wildlife refuge lands; and

(4) That offers and applications for leases and wildlife refuge lands shall be rejected upon receipt of an adverse report from the Fish and Wildlife Service that leasing would be inconsistent with the use of the land for wildlife purposes, notwithstanding any stipulations which may be made to protect such lands, and the rejection of such offers or applications shall be subject to the right of appeal to the Secretary of the Interior under existing Rules of Practice.

EDWARD WOOZLEY

Director

August 12, 1955

Memorandum

To: Area Administrator, Area 4

From: Director, Bureau of Land Management

Subject: Oil and Gas Applications in Moose Reserve

Reference is had to your memorandum of August 9 regarding the above subject. It appears that there are more than 300 applications for noncompetitive oil and gas leases for lands within a Moose Reserve on the Kenai Peninsula pending in the Anchorage office. The reserve was created by E.O. 8979 of Dec. 16, 1941, identified under Miscellaneous Number 1841730.

By memorandum of August 31, 1953, the Acting Director at the request of Assistant Secretary Lewis suspended action on all oil and gas lease applications and offers for lands within the wildlife refuges pending consideration of a possible revision of policy and regulations in the issuance of oil and gas leases within such refuges. This suspension applied to public domain as well as acquired lands. The Secretary has not as yet taken any action to revise the regulations, nor has he definitely determined not to revise same. Consequently, until such determination is made by the Secretary, the suspension memo of August 31, 1953 is still in effect, and such applications will remain in suspended status until otherwise notified by this office. This memorandum order does not prevent the filing of new offers for oil and gas leases in wildlife areas, but no action could be taken until the suspension order is removed.

Your attention is also called to the fact that there are existing regulations for issuing leases in wildlife refuges embodied in 43 CFR 192.9. The suspension was necessary in order that where compliance is not made therewith applicants for oil and gas leases will preserve their priority (see Circular 1984). Where applicants for oil and gas leases

comply with 192.9 and our attention is called to it, we remove the suspension order as to such case and direct the issuance of leases in the absence of other objections.

/s/ L. E. HOFFMAN
For the Director

HOUSE OF REPRESENTATIVES, U. S.
COMMITTEE ON MERCHANT MARINE AND FISHERIES
ROOM 219, HOUSE OFFICE BUILDING
WASHINGTON 25, D. C.

MARCH 21, 1956.

Hon. DOUGLAS MCKAY,
Secretary of the Interior,
Department of the Interior, Washington 25, D. C.

DEAR MR. SECRETARY: As you are aware, the committee has recently concluded hearings on H. R. 5306 and H. R. 6723, bills designed primarily to protect and preserve the national wildlife refuges. Representatives from your Department appeared and testified. It was evident from the testimony that some degree of control on the part of Congress properly should be exercised over changes in wildlife refuges which lessen their value for the conservation of wildlife. However, under the bills referred to above, specific legislation would have to be enacted in each individual case. This strikes me as too cumbersome a procedure.

In lieu of the requirements set forth in these bills, I suggest an arrangement whereby the Secretary of Interior would submit to the committee each proposed disposal of any interest which Fish and Wildlife Service has in any lands under its jurisdiction. Such submission would be accompanied by a full statement of the reasons for the change in status and a statement of any known or anticipated opposition thereto. Within 60 days, the committee would either come to agreement with your Department on the matter or give notice of its disapproval.

Such an arrangement would cover the alienation or relinquishment of any interest in such lands, or the grant of privileges in connection therewith, that do not have for their purpose the development and use of such lands for wildlife conservation. The agreement would not cover privileges related to recreational sites (concessions, etc.), rights-of-

—way for telephone, telegraph, and powerlines, and similar minor uses. In the case of rights-of-way for Federal aid highways, it is understood that your Department frequently is unable to give 60 days' advance notice; in those cases, it will suffice if you would give the committee as much advance notice as is possible within the limits of the time available to the Department for approval or rejection of the application for Federal aid for such highway development.

This suggested arrangement would be put into effect immediately and would be operative as an experiment pending the development of experience upon which to base its sufficiency.

I should appreciate your reaction to this proposal as soon as possible.

Sincerely,

HERBERT C. BONNER, *Chairman.*

UNITED STATES DEPARTMENT OF INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D. C.

March 21, 1956

Hon. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries
House of Representatives, Washington 25, D. C.

MY DEAR MR. BONNER: Your letter of March 21 refers to the recent hearings on H. R. 5306 and H. R. 6723, entitled bills "To protect and preserve the national wildlife refuges" administered by this Department. You suggest that the procedures under these bills with respect to the disposition of wildlife interests is too cumbersome and I agree.

Your letter then outlines an arrangement whereby each proposed disposal of any interest which the Fish and Wildlife Service has in any lands under its jurisdiction would be submitted to the committee together with a statement of the reasons for the proposed change in status and other material facts. Within 60 days after such submittal, the committee would either come to agreement with the Department on the matter or give notice of is disapproval. You also point out specifically what the arrangement is intended to cover.

Any arrangement which results in keeping the Congress currently advised of the activities, functions, and duties of this Department should prove to be of considerable benefit both to the Congress and to this Department. Thus, I am glad to agree to the suggestions as outlined in your letter.

Sincerely yours,

DOUGLAS MCKAY,
Secretary of the Interior.

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILD LIFE SERVICE

June 29, 1956

Hon. HERBERT C. BONNER, *Chairman*
Committee on Merchant Marine and Fisheries
House of Representatives
WASHINGTON, 25, D. C.

MY DEAR MR. BONNER:

In accordance with the agrement expressed in the communications between you and the Secretary of the Interior on March 21, we are referring for your attention proposals for the development of oil and gas resources involving lands of the Kenai National Moose Range in Alaska.

The first proposal is for the establishment of a unit area and the issuance of oil and gas leases on 71,680 acres of the Moose Range. The second proposal involves the possible issuance of leases on that part of the Kenai Peninsula Development Area established by development contract between the Secretary of the Interior and the Standard Oil Company of California, lying within the Kenai National Moose Range and involving about 165,000 acres of the Range.

The Moose Range of 2,057,197 acres of reserved public land is located on the Kenai Peninsula, about 25 miles southwest of Anchorage and 13 miles northwest of Seward and was established by Executive Order No. 8979 of December 16, 1941. The proposed Swanson River Unit Area in the northwest part of the Range and the Kenai Peninsula Development Area are shown on the enclosed map.

The Fish and Wildlife Service believes that the orderly development of oil and gas resources under such provisions as are needed for the protection of the lakes and streams and related fish and wildlife values will not lessen the value of the Range for the conservation of wildlife. Recent dis-

cussions with lease applicants indicate that this Service and the oil companies are in general agreement as to the safeguards which should apply in this instance. The proposed unit or cooperative agreement already executed by the Richfield Oil Corporation, the Ohio Oil Company, and the Union Oil Company of California, will provide that no operations will be conducted on lands of the Moose Range without prior approval of the Fish and Wildlife Service. The development contract with the Standard Oil Company of California also provides that no operations will be conducted on lands of the Kenai Moose Range without prior approval of the Fish and Wildlife Service.

Delegate E. L. Bartlett of Alaska has indicated his concurrence with the proposal to issue oil and gas leases on the 71,680 acres in the proposed unit area.

Sincerely yours,

JOHN L. FARLEY
Director

HOUSE OF REPRESENTATIVES, U. S.
COMMITTEE ON MERCHANT MARINE AND FISHERIES
ROOM 219, HOUSE OFFICE BUILDING
WASHINGTON 25, D. C.

July 3, 1956

MR. JOHN L. FARLEY, *Director*
Fish and Wildlife Service
Department of the Interior
Washington 25, D. C.

Re: Kenai National Moose
Range, Alaska

DEAR MR. FARLEY:

This will acknowledge receipt of your letter of June 29, 1956 advising me of the proposals to issue oil and gas leases on the above moose range.

This matter has been referred to the members of the Merchant Marine and Fisheries Committee and other interested persons and I will advise you further as soon as their replies are received.

Sincerely,

HERBERT C. BONNER
Chairman

HOUSE OF REPRESENTATIVES, U. S.
COMMITTEE ON MERCHANT MARINE AND FISHERIES
WASHINGTON 25, D. C.

July 25, 1956

MR. JOHN L. FARLEY, *Director*
Fish and Wildlife Service
Department of the Interior
Washington 25, D. C.

Re: Kenai National Moose Range, Alaska

DEAR MR. FARLEY:

As you are no doubt aware, the Committee held public hearings on the proposed issuance of oil and gas leases on the above moose range. The only opposition expressed was based upon the principle of maintaining the range inviolate. Mr. Bartlett, the delegate from Alaska, joined with representatives of your department in testifying that there would be no detriment to the wildlife values in the area. After considering the matter, the members of the Committee on Merchant Marine and Fisheries were unanimous in the view that the proposal will not prove detrimental. Accordingly, I, and the Committee, concur in the judgment of the Fish and Wildlife Service with reference to the issuance of the leases.

Sincerely,

HERBERT C. BONNER
Chairman

THE SECRETARY OF THE INTERIOR
WASHINGTON

May 1, 1958

DEAR MR. BONNER:

This will refer to our feeting of this morning and the discussion concerning the oil and gas leasing on federal wildlife lands.

On March 21, 1956, Douglas McKay, then Secretary of the Interior, directed a letter to you with reference to recent hearings on H. R. 5806 and H. R. 6723, entitled "To protect and preserve the national wildlife refuges." In that letter it was suggested that in the event of any leasing on lands under the jurisdiction of the Fish and Wildlife Service, the matter should be brought to the attention of the Committee through the Chairman of the Merchant Marine and Fisheries Committee, in which event a decision would be reached within sixty days.

In view of the new regulations and stipulations which now are in effect with regard to oil and gas leasing on such lands, it would appear that there was no longer a necessity for this procedure and we would respectfully suggest that in the future such notice not be necessary. However, in any case where a proposal to grant a lease or to exchange land or right of way results in substantial controversy, we would deem it desirable to inform you of any action we may take in the matter.

Sincerely yours,

ROSS LEFFLER
Assistant Secretary

Hon. Herbert C. Bonner
Chairman, Committee on
Merchant Marine and Fisheries
House of Representatives
Washington 25, D. C.

HOUSE OF REPRESENTATIVES, U. S.
COMMITTEE ON MERCHANT MARINE AND FISHERIES
ROOM 219, HOUSE OFFICE BUILDING

May 2, 1958

HONORABLE ROSS LEFFLER
Assistant Secretary of the Interior
Washington 25, D. C.

DEAR MR. LEFFLER:

This will acknowledge receipt of your letter of May 1, 1958, regarding our discussion of the new regulations and stipulations in effect with regard to oil and gas leasing on lands under the jurisdiction of the Fish and Wildlife Service.

I agree that there presently appears to be no necessity for the continuation of the procedure established between secretary McKay and the Committee on Merchant Marine and Fisheries by letter dated March 21, 1956.

However, I would appreciate being kept informed of transfers of interests in wildlife lands which, either because of their magnitude or controversial nature, are likely to be of interest to the Committee.

Sincerely,

HERBERT C. BONNER
Chairman